

**REVISED 01-07-2005**

**TO ADD ADDENDUM ITEM 10a**

**“Approval of Gander Mountain Non-Disturbance Agreement”**

**AGENDA REPORTS 01-11-2005**

**Agenda Item No. 3**

City of Wichita  
City Council Meeting  
January 11, 2005

Agenda Report No. 05-0050

TO: Mayor and City Council Members

SUBJECT: Petition to construct a Storm Water Drain in Avalon Park 2nd Addition  
(north of 37th St. North, east of Tyler) (District V)

INITIATED BY: Department of Public Works

AGENDA: Consent

Recommendation: Approve the Petition.

Background: On July 13, 2004, the City Council approved a Petition to construct a Storm Water Drain in Avalon Park 2nd Addition. Based on recent bid prices, it is doubtful that a construction contract can be awarded with the budget set by the Petition. The developer has submitted a new Petition with an increased budget. The signatures on the new Petition represent 100% of the improvement district.

Analysis: The project will serve a new residential development located north of 37th St. North, east of Tyler.

Financial Considerations: The existing Petition totals \$94,000. The new Petition totals \$245,000. The funding source is special assessments.

Legal Considerations: State Statutes provide that a petition is valid if signed by a majority of resident property owners or owners of the majority of the property in the improvement district.

Recommendation/Action: It is recommended that the City Council approve the Petition and adopt the Resolution.

## **Agenda Item No. 5.**

City of Wichita  
City Council Meeting  
January 11, 2005

Agenda Report No. 05-0051

TO: Mayor and City Council Members

SUBJECT: Street Closures: Removal of Railroad Crossings (Districts I, II and VI )

INITIATED BY: Department of Public Works

AGENDA: Consent

Recommendation: Approve the full and partial street closures.

Background: Late last year the Burlington Northern and Santa Fe Railway accepted the bid of Hall Industrial Services to remove the abandoned Burlington Northern trackage in northeast Wichita. Hall Industrial Services has further contracted with Cornejo & Sons to accomplish the track removal and street patching at the numerous street crossings. After much discussion with the Railroad, and now with representatives from Hall Industrial Services and Cornejo, a patching schedule was developed to minimize the time traffic will be affected, carry traffic past the work areas where it is safe and efficient to do so, and close the streets where existing roadway widths will not allow the work to be done under traffic. All four lane arterial streets will be patched while carrying traffic in one lane each direction. The two lane arterial streets will require 4 to 7 day complete closures.

Analysis: Cornejo & Sons will be responsible for the placement of required construction signs and barricades and the notification of area businesses and residents. The arterial street complete closures will require a signed detour and will use message boards to help make the general public aware of the upcoming closure dates. The contractor has agreed to maintain existing traffic on its normal side of the street as much as possible for the arterial street partial closures to improve safety during the patching process. No two consecutive arterial streets may be affected at any time. The attached schedule is weather dependent but will be the order in which the crossings are removed and patched.

Financial Considerations: The crossings will be removed at no cost to the City of Wichita.

Legal Considerations: None.

Recommendation/Action: It is recommended that the City Council approve the full and partial street closures.

LOCATION AUTHORITY /ST. TYPE	CLOSURE	DATE	LOCAL
159th St.* Road)	Temporary Closure	Jan. 10	(* Township
143rd St.**	Complete Closure	Jan. 11-14	(** County Road)
127th St.**	Complete Closure	Jan. 17-21	(** County Road /
City Maintenance)			
Greenwich Rd.**	Complete Closure	Jan. 11-14	(** County Road /
City Maintenance)			
Webb Rd.	Partial Closure	Jan. 17-21	City Arterial
Rock Road	Partial Closure	Jan. 24-28	City Arterial
Woodlawn	Partial Closure	Jan. 31-Feb. 4	City Arterial
Oliver	Partial Closure	Jan. 24-28	City Arterial
Shocker	Complete Closure	Jan. 31-Feb. 2	City Residential
13th St.	Partial Closure	Jan. 31-Feb. 4	City Arterial
Holyoak	Complete Closure	Feb. 1-4	City Residential
Hillside	Partial Closure	Feb. 7-11	City Arterial
Green	Complete Closure	Feb. 7-9	City Residential
Grove	Complete Closure	Feb. 9-11	City Residential
Piatt	Complete Closure	Feb. 14-16	City Residential
Bike Path @ Canal	Complete Closure	Feb. 14-16	Bike Path
Hydraulic	Complete Closure	Feb. 17-21	City Residential
Mathewson	Complete Closure	Feb. 14-16	City Residential
Cleveland	Complete Closure	Feb. 17-21	City Collector
Ohio	Complete Closure	Feb. 21-25	City Residential
Wabash	Complete Closure	Feb. 25-28	City
Residential			
Washington	Partial Closure	Feb. 21-25	City Arterial

Additional track removal and patching will occur in Washington St. From south of 8th St. to the north side of 13th St. and the dates of this work will be submitted in mid February.

## **Agenda Item No. 6.**

City of Wichita

City Council Meeting  
January 11, 2005

Agenda Report No. 05-0052

TO: Mayor and City Council Members

SUBJECT: Design Services for South Arkansas River Greenway Improvements  
(District III)

INITIATED BY: Department of Park and Recreation

AGENDA: Consent

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Recommendation: Approve the vendor and expenditure.

Background: On September 14, 2004, City Council approved and authorized the initiation of funding to provide design services for the South Arkansas River Greenway in the amount of \$30,000.

The City's Request for Proposal (RFP No. FP 400104) was developed to select a consultant to design an access point to the river for canoeing purposes. The proposed initial improvements include a small parking lot and canoe launching point, trailhead or meeting spot, and access trail.

Analysis: On November 3, 2004, the City received proposals from four design and engineering consultants. The following companies which submitted proposals were Gossen Livingston Associates, Inc., K.E. Miller Engineering P.A. w/Landworks Studio, Wilson Darnell Mann P.A., and Young and Associates, P.A. On December 9, 2004, the Staff Screening and Selection Committee interviewed K.E. Miller Engineering P.A. w/Landworks Studio and Young and Associates, P.A. The firm K.E. Miller Engineering w/Landworks Studio was selected, based on understanding of project requirements, staff designations, design fees, and the ability to provide services in a timely manner.

Financial Considerations: Funding for this project is provided by 2005 Park and Recreation Capital Improvement Funds. The proposed fee for professional services from K.E. Miller Engineering P.A. and Landwork Studio will be \$20,000.

Legal Considerations: The Law Department will review and approve the design contract as to form.

Recommendation/Action: Approve the recommendation of the Selection Committee for design services for the South Arkansas River Greenway.

## **Agenda Item No. 8.**

City of Wichita  
City Council Meeting  
January 11, 2005

Agenda Report No. 05-0053

TO: Mayor and City Council Members

SUBJECT: Irrigation Design and Build Services for Delano Park and Park Villa  
(District VI)

INITIATED BY: Department of Public Works  
Department of Park and Recreation

AGENDA: Consent

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Recommendation: Approve the vendor and expenditure.

Background: In an effort to promote effective water conservation and state of the art irrigation practices, the Public Works Natural Resources Office has allocated funding in keeping with the 1991 City of Wichita adopted water conservation plan objectives. The Park and Recreation Department has identified two sites which are eligible for improved irrigation maintenance functions and water efficiency. Currently, the Delano Park site and the Park Villa site are highly visible to the public and will require efficient irrigation systems to enhance the recent capital improvements at both sites. At Delano Park, the McLean Fountain was renovated in 2001 and a portion of landscaping and irrigation was established to enhance the renovation. However, a major portion of the site remains unirrigated and remains difficult to maintain a healthy turf appearance at this major gateway to the downtown area adjacent to the Douglas Avenue Bridge. At Park Villa, major renovation efforts were recently completed as part of the Riverside Park renovations. While the new renovations are a welcome addition, the landscape about the renovated building, lily pond, and the new parking area are void of irrigation. With the new irrigation, staff can begin to landscape and enhance this historic and beautiful facility which has become a more desirable place to host weddings, high school reunions, and similar events.

The City's Request for Proposal (RFP) was developed to select a vendor to design and build new irrigation systems at these sites. A pre-proposal conference was held on November 15, 2004 to allow all interested companies to ask questions about each site and what would be required in the proposals.

Analysis: On November 23, 2004, the City received proposals from eight irrigation companies. The companies that submitted proposals were Apex Irrigation, Aquarius Greenbelt, Lawn Sprinkler Services, Rain Link, Inc., Reddi Irrigation, SSI, Tree Top

Nursery and Landscaping, Inc., and Utility Contractors Inc./Suburban Landscapes Inc. On December 15, 2004, the Staff Screening and Selection Committee interviewed Lawn Sprinkler Services, Rain Link, Inc., and Tree Top Nursery and Landscaping Inc. The firm Lawn Sprinkler Services was selected, based on previous experience with similar projects, understanding of project requirements, overall cost of the projects, and the ability to execute the projects in a timely manner.

Financial Considerations: Funding for these projects is provided by the Public Works Natural Resources Office Water Conservation Program in the amount of \$33,325.21.

Legal Considerations: The Law Department will review and approve the purchase contract as to form.

Recommendation/Action: Approve the recommendation of the Selection Committee for construction of new irrigation systems and authorize the necessary signatures.

## **Agenda Item No. 10**

City of Wichita  
City Council Meeting  
January 11, 2005

Agenda Report No. 05-0054

TO: Mayor and City Council

SUBJECT: Weapons Destruction

INITIATED BY: Police Department

AGENDA: New Business

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Recommendation: Approve the request.

Background: The Police Department has routinely requested City Council approval for the destruction of weapons (firearms) which have been confiscated in criminal activity, but are no longer needed as evidence. In March 2004, it was requested that Police Department staff research the practicality and possibility of selling seized weapons, rather than destroying the firearms. The research was completed and forwarded to the City Manager. Since January 2004, the Wichita Police Department has not destroyed any

seized weapons and, because of this, approximately 800 firearms are awaiting destruction. Due to space and storage concerns, the Police Department is requesting approval to destroy the firearms currently in its inventory.

Analysis: City Code provides that weapons seized in connection with criminal activity shall be destroyed or forfeited to the Wichita Police Department. All transactions involving weapon disposal must have prior approval of the City Manager. K.S.A. 22-2512 requires that firearms seized in State court proceedings must be destroyed or forfeited to the Kansas Bureau of Investigation. The City Council could, pursuant to its Home Rule Authority, pass an ordinance which would allow for the sale of certain types of weapons seized in Municipal Court cases, to be sold to licensed firearm dealers. The City Council could not authorize the sale of weapons seized in District Court cases, as the disposition of these items is governed by the District Court.

Financial Considerations: None

Legal Considerations: Upon review by the City Council, the necessary court documents will be prepared to proceed with destruction of the listed weapons.

Recommendations/Actions: Approve request for weapons destruction and file the report.

### **ADDENDUM AGENDA ITEM NO. 10a.**

**City of Wichita  
City Council Meeting  
January 11, 2005**

**Agenda Report No. 05-0064**

**TO:** Mayor and City Council

**SUBJECT:** Approval of Gander Mountain Non-Disturbance Agreement  
(District I)

**INITIATED BY:** City Manager's Office

**AGENDA:** New Business

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**Recommendations:** Approve the Non-Disturbance Agreement and related documents.

**Background:** On December 21, 2004, the City Council approved legal documents needed for the development of the Gander Mountain store as part of the Wichita

WaterWalk Project. Documents included a ground lease, a declaration of covenants, conditions and restrictions (“CCR”), parking agreements and a use of highway right of way permit. Additional negotiations between WaterWalk LLC and Gander Mountain have taken place. In order to finalize its lease agreement with Gander Mountain and proceed with a construction phase closing, WaterWalk LLC is requesting the City enter into a Non-Disturbance Agreement with Gander Mountain. In addition, certain minor changes have been made to the legal description in the ground lease, the CCR and the highway right of way permit.

**Analysis:** The attached Non-Disturbance Agreement addresses the “what-if” scenario in which WaterWalk LLC or its successors, assigns or sublessees have defaulted on the ground lease with the City and the ground lease has been terminated. Under the terms of the Non-Disturbance Agreement, if Gander Mountain is not in default under its lease with WaterWalk, the City agrees that Gander Mountain may continue to occupy its leased premises, even though the ground lease with WaterWalk is no longer in effect.

This agreement is required by Gander Mountain, as well as WaterWalk’s lender, to provide assurance that the presence of a ground lease does not materially diminish the security of the lease agreement between Gander and WaterWalk. The Non-Disturbance Agreement does not in itself create any financial obligation on the part of the City. Likewise, the Non-Disturbance Agreement does not include an obligation on the part of Gander Mountain to cure any defaults under the ground lease. However, the most critical potential causes of default under the ground lease are also obligations of Gander Mountain under its lease with WaterWalk. These include restrictions on the types of businesses that may be operated on the property and the obligation to pay property taxes.

Final negotiations between Gander Mountain and WaterWalk LLC have also resulted in changes to the legal description of the land to be leased to WaterWalk under the Ground Lease. The area of leased land has increased from approximately 2.6 acres to 2.8 acres. This change was required to accommodate certain design changes to the building floorplan in which all floor space is now contained on one floor. The new legal description and site plan are attached hereto.

In addition to the Non-Disturbance Agreement, minor changes have been made to the Declaration of Covenants, Conditions and Restrictions and the Highway Permit for Use of Right of Way. These changes, which are intended primarily to clarify existing provisions, are shown in delineated format on the documents attached hereto.

**Financial Considerations:** The financial considerations for the City do not change as a result of the Non-Disturbance Agreement or requested changes to other documents.

**Legal Considerations:** The Law Department has reviewed the documents and approved them as to form.

**Recommendation/Actions:** It is recommended that the City Council approve the Non-Disturbance Agreement with Gander Mountain and amendments to the Legal Description



for Ground Lease No. 1, the Declaration of Covenants, Conditions and Restrictions and the Highway Permit for Use of Right of Way, and authorize the Mayor to sign.

### **NONDISTURBANCE AGREEMENT**

**THIS AGREEMENT** is dated as of \_\_\_\_\_, 2005, by and between the City of Wichita, Kansas ("City") and **GANDER MOUNTAIN COMPANY** ("Gander").

#### **RECITALS:**

A. The City owns the property legally described in Exhibit A attached hereto ("Property").

B. Gander has subleased the Property from \_\_\_\_\_, the sublessee and affiliate of the City's ground lessee, pursuant to a lease dated \_\_\_\_\_, 2005 and all amendments, supplements and additions thereto ("Sublease").

C. The City has agreed to grant nondisturbance rights to Gander on the terms and conditions hereinafter set forth.

**IN AGREEMENT**, Gander and the City agree as follows:

1. **Nondisturbance**. Notwithstanding the failure of any party to comply with obligations of any agreements with respect to the Property other than the Sublease, including, without limitation, (a) the Declaration of Covenants, Conditions and Restrictions of Wichita Waterwalk dated December 21, 2004 by the City and WaterWalk LLC, (b) WaterWalk GM District Parking Agreement by the City and Waterwalk LLC dated as of December 21, 2004 and (c) the Parking Agreement by the City and Waterwalk LLC dated as of December 21, 2004, the City agrees that Gander's possession of the Property and its other rights and privileges under the Sublease or any extensions or renewals thereof, shall not be diminished, disturbed or interfered with by the City and the Sublease shall not terminate so long as Gander is not in default under the Sublease (beyond any applicable cure periods provided in the Sublease).

2. **Successors and Assigns**. This Agreement shall run with the land and shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns.

3. **Counterparts**. This Agreement may be executed in counterparts, all of which taken together shall constitute one and the same instrument and any of the parties hereto may execute this Agreement by signing any such counterpart.

4. **Notices**. All notices or other communications required or permitted to be given by this Agreement shall be in writing and shall be personally

delivered, sent registered or certified mail, postage prepaid, or sent by a nationally recognized courier service that issues a receipt, to the other party at the address in this Section (or to such other address as may be designated by notice to the other party) and shall be deemed given upon the earlier of personal delivery, the date postmarked, delivery to such courier or the refusal to accept such service:

City: The City of Wichita, Kansas  
Attn: City Clerk  
455 N. Main  
Wichita, Kansas 67202

Gander: Gander Mountain Company  
Attn: Real Estate Department  
4567 American Boulevard West  
Minneapolis, MN 55437

With a copy to: Gander Mountain Company  
Attn: Legal Department  
4567 American Boulevard West  
Minneapolis, MN 55437

**IN AGREEMENT**, the parties hereto have executed this Agreement as of the day and year first above written.

**CITY:**

CITY OF WICHITA, KANSAS

BY \_\_\_\_\_  
Carlos Mayans  
Mayor

**GANDER:**

GANDER MOUNTAIN COMPANY

By \_\_\_\_\_  
Its \_\_\_\_\_

Attest:

\_\_\_\_\_  
Karen Sublett, City Clerk

Approved as to form:

\_\_\_\_\_  
Gary E. Rebenstorf  
Director of Law and City Attorney

STATE OF MINNESOTA    )  
  ) ss.  
COUNTY OF HENNEPIN        )

The foregoing instrument was acknowledged before me this    day of \_\_\_\_\_  
\_\_\_\_\_, 2005, by \_\_\_\_\_, the \_\_\_\_\_  
\_\_\_\_\_ of Gander Mountain Company, a Minnesota corporation, on behalf of the  
corporation.

\_\_\_\_\_  
Notary Public

EXHIBIT A  
TO NONDISTURBANCE AGREEMENT

**Property**

**Agenda Item No. 11**

City of Wichita  
City Council Meeting  
January 11, 2005

Agenda Report No. 05-0056

TO:                               Mayor and Members of the City Council

SUBJECT:                       General Obligation Bond and Note Sale

INITIATED BY:               Finance Department

AGENDA:                       New Business

Recommendation: Approve the bids.

Background: The City is offering for sale one series of general obligation temporary notes totaling \$57,585,000 (Series 213), two series of general obligation bonds (Series 780 and 780A) totaling \$19,810,000 for the purpose of providing permanent financing for capital improvement projects of the City, and one series of general obligation bonds

(Series 958) totaling \$4,140,000 for the purpose of providing permanent financing for Tax Increment Finance (TIF) related projects of the City.

Analysis: The proceeds from the sale of the Series 213 Temporary Improvement and Renewal Notes will be used to provide interim financing for City-at-large and improvement district projects. The proceeds from the sale of the Series 780 and 780A Bonds will be used to permanently finance neighborhood improvements located in special improvement districts. The proceeds from the sale of the Series 958 Bonds will be used for public improvements located within the Gilbert and Mosley Tax Increment Financing District.

Sealed bids will be accepted via facsimile, walk-in sealed bids or electronically through I-Deal, LLC/PARITY Electronic Bid Submission System until 10:30 a.m. CST in the IT/IS Conference Room, at which time the bids will be publicly opened. No bids will be accepted after the 10:30 a.m. deadline. The bids will be verified, tabulated and presented to the City Council at its earliest convenience following the tabulation of the bids. By law, the City must award the sale of the bonds and notes to the bidder whose proposed interest rates result in the lowest true interest rate.

Financial Considerations: The Series 213 Temporary Notes will mature August 4, 2005, and will be retired using cash, the proceeds of both permanent financing bonds, and renewal notes issued at that time. The Series 780 Bonds will mature serially over fifteen years and will be paid from special assessments that are levied against benefited property. The Series 780A Bonds will mature serially over twenty years and will be paid from special assessments that are levied against benefited property. The Series 958 Bonds will mature serially over 15 years with principal maturities structured to produce payments which fall within the net tax increment revenue stream. The Series 958 TIF Bonds are payable from the collection of property taxes to the Sedgwick County Treasurer and paid to the City Treasurer. The Series 780 and Series 958 Bonds will be callable in 2012 and the Series 780A Bonds will be callable in 2015 with a 1% call premium, in accordance with the City's debt management policy.

Legal Considerations: Bond Counsel will review and approve the bids and the Law Department will approve the authorizing Ordinances and Resolutions which have been prepared by Bond Counsel.

Recommendation/Action: It is recommended that the City Council: (1) direct the opening and reading of the bids; (2) award the sale of the Bonds and Temporary Notes; and (3) find and declare, upon the request of the Mayor, that a public emergency exists, requiring the final passage of the Bond and Note Ordinances on the date of their introduction, adopt the Bond and Note Ordinances and Resolutions and authorize the publication thereof.

## **AGENDA ITEM NO. 12**

City of Wichita

City Council Meeting  
January 11, 2005

Agenda Report No. 05-0057

TO: Mayor and City Council

SUBJECT: ZON2004-00058 – Zone change from “SF-5” Single-family Residential to “NO” Neighborhood Office. Generally located at the northwest corner of Douglas and Tyler. (District V)

INITIATED BY: Metropolitan Area Planning Department

AGENDA: Planning (Non-Consent)

MAPC Recommendations: Approve, subject to the provisions of amended Protective Overlay #149 (Vote 9-3)

MAPD Staff Recommendations: Deny.

DAB Recommendations: Approve, subject to provisions of staff recommended Protective Overlay #149, plus: the elimination of a wireless communication facility as a permitted use; an updated drainage plan is to be submitted prior to construction; all access to the site is to be via Douglas Avenue, cross lot access and building heights are limited to a maximum of 35 feet. (Vote 3-2)

BACKGROUND: The application area is 1.04 acres located at the northwest corner of Douglas and Tyler, and is zoned SF-5, Single-family Residential. The applicants are seeking NO, Neighborhood Office zoning to allow the site to be developed for office uses. The acreage is platted as the R. Beard Addition and involves four lots that remain undeveloped today. The ownership of the application area is divided between the two applicants. One co-applicant owns the northern two lots while the other co-applicant owns the southern two lots. The northern most two lots are oriented east-west towards Tyler. The southern most lots are oriented north-south towards Douglas.

There is platted access control along Tyler that permits one 30-foot wide break in access control that is located 192 feet north of the Tyler and Douglas intersection. There are not any platted access controls located along Douglas. Douglas, at this location, is a two-lane residential street. Tyler is a four-lane arterial.

The plat also contains platted setbacks. Twenty-five foot setbacks have been established along the Tyler and Douglas frontages. A 15-foot utility easement is also located along the west property line.

No site or development plan has been submitted (and is not required) that would indicate the development scheme.

All surrounding property is zoned SF-5, Single-family Residential and developed with single-family homes. The nearest non-residential zoning relative to the application area is located over 600 feet to the south.

The SF-5 district has the following setback requirements: front-25 feet, rear-20 feet and interior side-six feet. Maximum building height is 35 feet. The NO district has the following setback requirements: front-20 feet, rear-10 feet and interior side-zero or five feet. Maximum building height is 35 feet. The NO district permits four commercial “by-right” uses: automated teller machine, medical service, general office and wireless communication facility. These four use types are individually restricted by code to a maximum gross floor area of 8,000 square feet.

Compatibility side and rear building setbacks will be required. Compatibility height standards restrict building heights located within 50 feet of lot lines to 35 feet or less. For each three feet of setback beyond 50 from the lot line, the building height can be increased one foot in height. Dumpsters and refuse containers must be located 20 feet from any property zoned TF-3 or more restrictive.

Analysis: District Advisory Board V (DAB) heard this request on December 6, 2004. Their recommendation was to approve (3-2) the request, subject to the conditions contained in the staff report: buildings should be residential in character, share exterior building materials and colors, muted exterior colors; signage per the sign code, except all ground signage shall be monument signs, no signage can face south, west or north; parking lot lighting standards are restricted to 14 feet or less in height; access from Douglas is limited to the western one-third of the Douglas Avenue frontage. DAB members added the following conditions of approval: the elimination of a wireless communication facility as a permitted use; an updated drainage plan prior to construction; limit building heights to a maximum of 35 feet; cross lot circulation and access to the site is to be via Douglas only (elimination of the Tyler Road access point allowed by the plat).

On December 9, 2004, the Metropolitan Area Planning Commission reviewed this application, and recommended approval (9-3) subject to the conditions contained in the staff report and some of the DAB recommendations. MAPC modified the DAB recommendations as follows: a requirement to dedicate ten-feet of right of way along Tyler (added); one right-in/right-out opening on Tyler is permitted (no access to Tyler was recommended by the DAB); all other DAB and staff recommendations were retained. The MAPC recommendations for approval includes the following conditions of Protective Overlay Number 149:

1. Any building(s) constructed on the site should be residential in character (e.g. rooflines should be hip or gable roof; exterior facade materials typical of residential

construction should be wood, brick or stucco or similar materials). If multiple buildings are constructed on the site, they should share similar exterior materials and colors. Predominate exterior building colors should be muted.

2. Signage shall be per the sign code, except that all ground or pole signs shall be monument type, and no building signs shall face south, west or north.
3. Parking lot lighting standards shall not exceed 14 feet in height.
4. Access from Douglas shall be limited to one driveway located in the western one-third of the Douglas street frontage.
5. One right-in/right out opening on Tyler Road.
6. Dedication of 10 foot right-of-way on Tyler.
7. Elimination of a wireless communication facility as a permitted use.
8. An updated drainage plan is required prior to construction.
9. Building heights are limited to a maximum of 35 feet.
10. Cross-lot circulations is required.

Protestors were present at both the DAB and MAPC meetings. They expressed opposition to the request as it would: introduce nonresidential uses into a totally residential area, loss of value in homes, increased traffic from the project will worsen access to Tyler and Douglas from residents' driveways and lack of sidewalks causes people to walk in Douglas further impacting safety. Nearby property owners have submitted protest petitions exceeding 20 percent of the land area within 200 feet of the perimeter of the property triggering the  $\frac{3}{4}$  majority vote requirement for the City Council to override their protest and approve the request.

Financial Considerations: None

Legal Considerations: The ordinance has been reviewed and approved as to form by the Law Department.

Recommendation/Actions: It is recommended that the City Council:

1. Concur with the findings of the MAPC and approve the zone change to NO Neighborhood Office, subject to the conditions contained in Protective Overlay Number 149; place the ordinance on first reading; authorize staff to withhold publication of the ordinance authorizing this zone change until all conditions are met; or
2. Return the application to MAPC for reconsideration.

(An override of the Planning Commission's recommendation requires a two-thirds majority vote of all the members of the governing body on the first hearing.)

## **Agenda Item No. 13**

City of Wichita  
City Council Meeting  
January 11, 2005

Agenda Report No. 05-0058

TO: Mayor and City Council

SUBJECT: CUP2004-00036 – (Associated with ZON2004-00040) – Create DP278 Newmarket V Commercial Community Unit Plan; zone change to “LC” Limited Commercial. Generally located south of 29th Street North and west of Maize Road. (District V)

INITIATED BY: Metropolitan Area Planning Department

AGENDA: Planning (Non-Consent)

MAPC Recommendations: Approved subject to platting within two years, and staff recommended conditions, except for removal of a cross-lot circulation requirement. (10-3)

MAPD Staff Recommendations: Approve subject to platting within two years and conditions.

DAB Recommendations: Not applicable.

Background: The applicant is requesting to create DP-278 Newmarket V Commercial Community Unit Plan, which would be a 13.3 acre development with three parcels proposed for commercial use. The property is located west of Maize Road and south of 29th Street North. Parcel 1 is 1.35 acres and is located at the Maize/29th Street North intersection. Parcel 2 (10.98 acres) and parcel 3 (.93 acres) front Maize Road; with parcel 2 wrapping around the smaller parcel 3 at the CUP south boundary.

Proposed uses are “LC” Limited Commercial uses, except: group residences, correctional placement residences; vehicle storage yards; vehicle repair, general; outdoor storage; pawn shops; taverns; nightclubs; asphalt or concrete plants; sexually oriented business, and adult entertainment as defined by city code. Likewise, any use requiring a



Conditional Use in “LC” shall require a CUP amendment or adjustment, as determined by the planning director.

Maximum building coverage is approximately 20 percent on all parcels. Floor area ratio is also approximately 20 percent for parcels 1 and 3, and 29 percent for parcel 2. Maximum height is 35 feet for parcels 1 and 3, and 40 feet for parcel 2. Setbacks are established at 35 feet along Maize and 29th Street North, no setbacks are given for the west and south boundary lines.

The CUP includes provisions for landscaping per Landscape Ordinance of the City of Wichita, and a pedestrian circulation system within the CUP. The CUP calls for architectural compatibility among the buildings in the CUP. Signage requested is per the standard City of Wichita signage requirements.

North of the CUP, across 29th Street North is SF-20 zoned property developed with suburban residences; this area is proposed for a health club development. Property south of the proposed CUP is the LC zoned Evergreen commercial development, owned by the Target Corporation. East of the application area, across Maize, is a single, large SF-20 zoned single-family suburban residence. West of the development is an LC zoned approved CUP (DP 269 – Spencer’s Cove). Also west of the site is SF-5 zoned property under the same ownership as the application area, and designated as a drainage reserve. The US Army Corps of Engineers has notified staff that the application area, as well as surrounding areas, is classified as a jurisdictional wetland, requiring a permit for development.

Analysis: At the MAPC hearing on September 23, 2004, the applicant spoke in support of all staff recommended conditions, with the exception of cross-lot circulation with the commercial CUP to the west. A representative of the bordering CUP to the west (Spencer’s Cove, DP 269) spoke in support of a cross-lot circulation requirement between the two developments, as recommended by staff and the City of Wichita Access Management Policy. The MAPC voted (6-5) to recommend approval of the request subject to staff recommended conditions.

Wichita City Council heard this request on November 2, 2004. The action of the council was to send the request back to MAPC to see if the applicant and the Spencer’s Cove CUP representative could work out a cross-lot circulation agreement. The applicant updated their submitted CUP document to reflect staff recommended and MAPC approved conditions, with the exception of the cross-lot circulation requirement (see attached).

MAPC heard this request for a second time on December 9th, 2004. The action of the Planning Commission was to approve the request (10-3), as submitted by the applicant, without the cross-lot circulation requirement. This was a change from the previous MAPC approval, which required the cross-lot circulation condition. The applicant successfully argued that the site’s configuration, drainage constraints and existing development pattern strongly dictate against cross-lot circulation. The site is a somewhat

narrow rectangle whose development is impacted by surface water drainage concerns. The applicant emphasized that drainage can be fully addressed and the proposed construction plan was a natural and logical extension of earlier Newmarket Square construction patterns, a development pattern of a certain quality and style that the adjoining property seeking the cross-lot connection is not required to match. The applicant further emphasized that to require cross-lot circulation would force an artificial connection that would not enhance traffic flow and potentially create safety issues within the development.

Staff received one protest petition on this case from the Spencer's Cove CUP (DP 269), resulting in an 22.02% protest area. This protest, greater than 20%, requires a supermajority (three-fourths) override vote of the governing body to approve the request.

Financial Considerations: None.

Legal Considerations: The ordinance has been reviewed and approved as to form by the Law Department.

Recommendation/Actions:

1. Adopt the findings of the MAPC and approve the zone change and CUP subject to the condition of platting within two years and the recommended conditions without a cross-lot circulation requirement; instruct the Planning Department to forward the ordinance for first reading when the plat has been recorded with the Register of Deeds; or

#### **Agenda Item No. 14.**

City of Wichita  
City Council Meeting  
January 11, 2005

Agenda Report No. 05-0059

TO: Mayor and City Council

SUBJECT: VAC2004-00051 Request to vacate a portion of a platted utility easement, generally located southwest of the 119th Street West and Central Avenue intersection, more specifically located northwest of the Hardtner Circle and Jaax Street intersection

(District V)

INITIATED BY: Metropolitan Area Planning Department

AGENDA: Planning (Consent)

Staff Recommendation: Approve

MAPC Recommendation: Approve (unanimous)

Background: The applicant proposes vacation of the west 55-feet of the platted 20-foot utility easement located along the north property line of Lot 3, Block A, the Bay Country 2nd Addition. The Bay Country 2nd Addition was recorded with the Register of Deeds August 5, 1999.

Analysis: There is a sewer line and a manhole located in the eastern portion of the platted utility easement. There is Westar equipment located in the platted utility easement. Westar has indicated that the south 12-feet of the west 55-feet of the platted utility easement can be vacated. A water line is located in the right-of-way. There is 20-feet of a 40-foot Philips Pipeline easement (dedicated by separate instrument and shown on the plat) also located in the north side of the lot. The platted utility easement begins where the pipeline easement ends, which puts a total of 40-feet of easement in the applicant's backyard.

The MAPC voted to approve (13-0) the vacation request. No one spoke in opposition to this request at the MAPC's advertised public hearing or its Subdivision Committee meeting. No written protests have been filed.

Financial Considerations: None

Legal Considerations: A certified copy of the Vacation Order will be recorded with the Register of Deeds

Recommendation/Actions: Follow the recommendation of the Metropolitan Area Planning Commission and approve the Vacation Order, and authorize the necessary signatures.

## **Agenda Item No. 15**

City of Wichita  
City Council Meeting  
January 11, 2005

Agenda Report No. 05-0060

TO: Mayor and City Council

SUBJECT: VAC2004-00053 Request to vacate a portion of a platted utility easement, generally located ¼ mile east of West Street and south of 21st Street North, more specifically located on the northeast corner of Westridge Drive and Westridge Court.

(District VI)

INITIATED BY: Metropolitan Area Planning Department

AGENDA: Planning (Consent)

Staff Recommendation: Approve

MAPC Recommendation: Approve (10-3)

Background: The applicants propose vacation of a portion of the platted 16-foot utility easement located on Lot 8, the Scenic Heights Addition. The Scenic Heights Addition was recorded with the Register of Deeds June 2, 1965.

Analysis: The platted 16-foot utility easement was originally recorded along the north side of Lot 8 and the south side of Lot 2, the Scenic Heights Addition. The south 35-feet of Lot 2 was subsequently purchased and joined onto the north portion of Lot 8, which gives the site its current configuration. There are no manholes, water or sewer lines in the easement.

The MAPC voted to approve (10-3) the vacation request. Three members of the MAPC voted against the vacation request, in protest to the Public Works' request of dedication of an additional two-feet to another 16-foot easement located on the applicant's property. This 16-foot easement has a sewer line and a manhole located in it. Public Works, per the Subdivision Regulations, has requested dedication of additional easement when an easement, located on a subject property, is not the current 20-foot wide standard. The applicant did not protest the request for the dedication of the additional two-feet of width to the platted 16-foot utility easement. No one spoke in opposition to this request at the MAPC's advertised public hearing or its Subdivision Committee meeting. No written protests have been filed.

Financial Considerations: None

Legal Considerations: A certified copy of the Vacation Order and a dedication by separate instrument of additional width to a public utility easement will be recorded with the Register of Deeds

Recommendation/Actions: Follow the recommendation of the Metropolitan Area Planning Commission and approve the Vacation Order, and authorize the necessary signatures.

## **Agenda Item No. 16**

City of Wichita  
City Council Meeting  
January 11, 2005

Agenda Report No. 05-0061

TO: Mayor and City Council

SUBJECT: VAC2004-00056 Request to vacate a portion of a drainage easement dedicated by separate instrument, generally located midway between 29th Street North and 37th Street North, west of Ridge Road, more specifically located northeast of the Wild Rose Street and Forest Lakes Street intersection.  
(District V)

INITIATED BY: Metropolitan Area Planning Department

AGENDA: Planning (Consent)

Staff Recommendation: Approve

MAPC Recommendation: Approve (unanimous)

Background: The applicant is requesting consideration for the vacation of a portion of a drainage easement dedicated by separate instrument, (Film 1696, Page 336), located on Lot 87, Block 4, the Forest Lakes Addition. The Forest Lakes Addition was recorded with the Register of Deeds April 21, 1993.

Analysis: The drainage easement dedicated by separate instrument, generally runs parallel to what was the lot lines of Lots 86 and 87, all in Block 4, the Forest Lakes Addition. It appears that the original configuration of these lots has change due to a boundary shift. A house located on Lot 87 has been built into what can be generally described as a two-foot wide (x) 37-foot long portion of the drainage easement. Storm Water has reviewed and approved the vacation request.

The MAPC voted to approve (13-0) the vacation request. No one spoke in opposition to this request at the MAPC's advertised public hearing or its Subdivision Committee meeting. No written protests have been filed.

Financial Considerations: None

Legal Considerations: A certified copy of the Vacation Order will be recorded with the Register of Deeds.

Recommendation/Actions: Follow the recommendation of the Metropolitan Area Planning Commission and approve the Vacation Order, and authorize the necessary signatures.

### **Agenda Item No. 17**

City of Wichita  
City Council Meeting  
January 11, 2005

Agenda Report No. 05-0062

TO: Wichita Airport Authority

SUBJECT: Passenger Facility Charge (PFC) Amendment

INITIATED BY: Airport Department

AGENDA: Wichita Airport Authority (Consent)

Recommendations: Approve the PFC amendment.

Background: The Wichita Airport Authority (WAA) began collecting a \$3.00 PFC charge at Wichita Mid-Continent Airport in 1994. The “Wendell H. Ford Aviation Investment and Reform Act for the 21st Century” (AIR-21) enabled a public agency to apply to the Federal Aviation Administration (FAA) to increase the PFC level that it may charge to \$4 or \$4.50 provided the projects met certain additional criteria.

Analysis: Staff has prepared an amendment to increase the collection level from \$3.00 to \$4.50 per eligible enplaned passenger to shorten the collection period of the current PFC application in anticipation of a subsequent application. The amendment information is subject to comment by the airlines, and then must be approved by the FAA.

Financial Considerations: This amendment does not alter the current application project list or the amount of \$9,329,500, but will allow it to be collected at a faster rate. The new estimated expiration date is June 1, 2007.

Legal Considerations: None.

Recommendation/Actions: It is recommended that the Wichita Airport Authority approve the PFC amendment and authorize the necessary signatures for submission.

### **Agenda Item No. 18**

City of Wichita  
City Council Meeting  
January 11, 2005

Agenda Report No. 05-0063

TO: Wichita Airport Authority

SUBJECT: Tenant Facility Improvements  
Wichita Mid-Continent Airport

INITIATED BY: Airport Department

AGENDA: Wichita Airport Authority (Consent)

Recommendation: Approve the contract.

Background: On November 16, 2004 the Wichita Airport Authority approved a project for Tenant Facility Improvements. The project allows for improvements to be made to the FAA parking lots.

Analysis: Six proposals were received and reviewed by the Staff Screening and Selection Committee. From the six proposals received three firms were interviewed. Certified Engineering Consultants has been selected for engineering services.

Financial Considerations: The design and bid phases services contract amount is \$50,784 and will be funded with General Obligation Bonds paid with airport revenue, and will be recovered through FAA rental rates. Funds are available in the approved budget.

Legal Considerations: The Contract has been approved as to form.

Recommendations/Actions: It is recommended that the Wichita Airport Authority approve the contract, and authorize the necessary signatures.